

Federal Deposit Insurance Corporation

§ 303.82

newspaper's publication date that is closest to the 7th day.

(2) *Probable failure.* If the FDIC determines that it must act immediately to prevent the probable failure of one of the institutions involved in a proposed merger transaction, publication is not required.

(c) *Content of notice*—(1) *General.* The notice shall conform to the public notice requirements set forth in § 303.7.

(2) *Branches.* If it is contemplated that the resulting institution will operate offices of the other institution(s) as branches, the following statement shall be included in the notice required in § 303.7(b):

It is contemplated that all offices of the above-named institutions will continue to be operated (with the exception of [insert identity and location of each office that will not be operated]).

(3) *Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, the notice shall specify as the closing date of the public comment period the date that is the 10th day after the date of the first publication.

(d) *Public comments.* Comments must be received by the appropriate FDIC office within 30 days after the first publication of the notice, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2). If the FDIC has determined that an emergency exists requiring expeditious action, comments must be received by the appropriate FDIC office within 10 days after the first publication.

§§ 303.66—303.79 [Reserved]

Subpart E—Change in Bank Control

§ 303.80 Scope.

This subpart sets forth the procedures for submitting a notice to acquire control of an insured state nonmember bank pursuant to the Change in Bank Control Act of 1978, section 7(j) of the FDI Act (12 U.S.C. 1817(j)).

§ 303.81 Definitions.

For purposes of this subpart:

(a) *Acquisition* means a purchase, assignment, transfer, pledge or other dis-

position of voting shares, or an increase in percentage ownership of an insured state nonmember bank resulting from a redemption of voting shares.

(b) *Acting in concert* means knowing participation in a joint activity or parallel action towards a common goal of acquiring control of an insured state nonmember bank, whether or not pursuant to an express agreement.

(c) *Control* means the power, directly or indirectly, to direct the management or policies of an insured bank or to vote 25 percent or more of any class of voting shares of an insured bank.

(d) *Person* means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, and any other form of entity; and a voting trust, voting agreement, and any group of persons acting in concert.

§ 303.82 Transactions requiring prior notice.

(a) *Prior notice requirement.* Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the FDIC 60 days prior written notice, as specified in § 303.84, before acquiring control of an insured state nonmember bank, unless the acquisition is exempt under § 303.83.

(b) *Acquisitions requiring prior notice*—(1) *Acquisition of control.* The acquisition of control, unless exempted, requires prior notice to the FDIC.

(2) *Rebuttable presumption of control.* The FDIC presumes that an acquisition of voting shares of an insured state nonmember bank constitutes the acquisition of the power to direct the management or policies of an insured bank requiring prior notice to the FDIC, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 10 percent or more of any class of voting shares of the institution, and if:

(i) The institution has registered shares under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(ii) No other person will own, control or hold the power to vote a greater percentage of that class of voting shares immediately after the transaction. If